

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

DEC 23 3 50 PM '92

MM Docket No. 92-304✓

In the Matter of

Renewal Reporting Requirements for
Full Power, Commercial AM, FM and TV
Broadcast Stations

NOTICE OF PROPOSED RULE MAKING

Adopted: December 18, 1992; Released: December 30, 1992

Comment Date: February 23, 1993

Reply Comment Date: March 10, 1993

By the Commission:

I. INTRODUCTION

1. We are initiating this *Notice of Proposed Rule Making* on our own motion, to consider whether to require licensees of certain types of broadcast stations to report on their license renewal applications the status of their operations. Specifically, we propose to modify Form 303-S to require licensees of full power commercial AM, FM and TV stations to report whether, at the time of license renewal, their stations are on the air or have discontinued operations.

II. DISCUSSION

2. Section 73.1740(a)(4) of the Commission's Rules permits commercial AM, FM, and TV licensees to limit or discontinue operations for a period of 30 days without authority from the Commission. Licensees are required, however, to notify the Commission of limited or discontinued operations not later than the 10th day of such operation. The licensee is required to request additional time if station operations are not resumed within 30 days.¹ In addition, Section 73.1750 requires these commercial licensees to tender their license authorizations to the Commission for cancellation when discontinuance of station operations is permanent.

3. When a station has been authorized to remain silent and the Commission has not been notified that operations have resumed, the Commission inquires as to whether the station has returned to the air and, if not, what steps the licensee intends to take to restore broadcast operations. Thereupon, the Commission will determine whether fur-

ther silence authority is warranted and what further action is appropriate, including cancellation of the station's license. Where this inquiry occurs at renewal time, action on the silent station's license renewal application is held in abeyance until broadcast operations are resumed or the matter is otherwise resolved.

4. Preliminary information gathered by the Commission indicates that commercial AM, FM, and TV stations may not be complying fully with the requirements of §§ 73.1740 and 73.1750. For example, the Commission is aware of an increasing number of commercial AM and FM stations (more than 200) that appear to have discontinued operations. Many of those stations did not notify the Commission of discontinued operations in a timely manner, and few that have permanently discontinued operations have tendered the license to the Commission for cancellation.

5. When a licensee discontinues operations for a long period of time, the public is harmed through diminished service. This harm is compounded when the licensee is unable or unwilling to restore service and permanently discontinues operations but does not provide that information to the Commission so that the frequency might be used by another party. Allowing such licensees to preserve their exclusive right to use the frequency precludes the provision of service to the public by another interested party that would resume station operations. It also hinders the Commission's maximum utilization of the electromagnetic spectrum in the public interest.

6. The Commission has historically regarded as paramount its role under the Communications Act to ensure that licensees broadcast in the public interest. The Communications Act specifically imposes on the Commission the responsibility to "determine, in the case of each application filed with it . . . whether the public interest, convenience and necessity will be served by the granting of such application." 47 U.S.C. § 309(a). Unjustified prolonged suspension of station operations disserves the public interest, and the information which we propose to seek would promote the expeditious restoration of service to the public. Accordingly, we seek comment on our proposal to add to FCC Form 303-S the following questions:

Is the station off the air as of the date of this filing?

☐ Yes ☐ No

If yes, attach as Exhibit No. ____ a statement of explanation, including the steps the applicant intends to take to restore service to the public.

III. CONCLUSION

7. In light of the number of stations that appear to have discontinued operations, and in keeping with our policy of generally withholding action on renewal applications until after stations that are off the air have resumed operations, the Commission is initiating this proceeding to propose

¹ Noncommercial educational AM, FM and TV stations, as well as FM and TV translator, LPTV and ITFS stations, are subject to different requirements, depending on the specific services involved. In light of differing treatment of these stations with regard to authority to discontinue operations, and in the ab-

sence of any indication of widespread discontinuance of operations by such stations, we are not proposing to modify the information required of licensees of these stations at renewal time.

modification of Form 303-S in order to solicit information at renewal time as to the status of full power commercial AM, FM and TV broadcast operations.

IV. ADMINISTRATIVE MATTERS

Ex Parte Rules -- Non-Restricted Proceeding

8. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

Comment Information

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **February 23, 1993**, and reply comments on or before **March 10, 1993**. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Initial Regulatory Flexibility Analysis

10. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981)).

11. **Reason for the Action:** The purpose of this *Notice* is to consider whether to solicit information at renewal time as to the status of licensees' broadcast operations.

12. **Objective of this Action:** This action is intended to determine whether soliciting such information would be in the public interest.

13. **Legal Basis:** Authority for the actions proposed in this *Notice* may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303.

14. **Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule:** Licensees would be required to report as to the status of their broadcast operations at renewal time.

15. **Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule:** None.

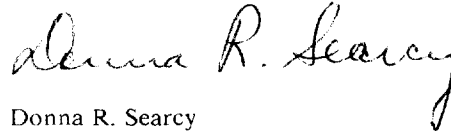
16. **Description, Potential Impact and Number of Small Entities Involved:** Approximately 10,000 existing commercial broadcasters of all sizes would be affected by the proposals contained in this *Notice*.

17. **Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:** None.

Additional Information

18. For additional information on this proceeding, contact David E. Horowitz, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION



Donna R. Searcy
Secretary